

**STATEMENT OF REPRESENTATIVE EDWARD J. MARKEY (D-MA)**  
**IN OPPOSITION TO H.R. 5**  
**JULY 28, 2005**

Mr. Speaker, this bill is a public policy placebo that doesn't relieve the sting doctors are feeling from sky-high insurance premiums. It only offers the illusion of relief, while pumping cash into the bottom line of the insurance companies.

The bill gives insurers a prescription for pumped-up profits by capping damages paid to patients injured as a result of medical errors.

Capping damages may save insurance companies money when their policyholders are sued, but the bill doesn't require insurers to pass along one cent of savings to doctors in the form of lower medical liability premiums.

Two and a half years ago, when H.R. 5 was considered in the Energy and Commerce Committee, I offered an amendment to ensure that any savings from the bill's caps on damages for patient pain and suffering would be passed along to doctors in the form of reductions in their liability insurance premiums. This amendment would have established the "missing link" in this bill between liability caps and lower premiums for physicians. The Republican side defeated my amendment.

This year, there was no Committee markup – the Republican Leadership drove this "legislative lemon" right to the House Floor without even allowing Democrats an opportunity to amend the bill on the Floor. The bill on the Floor today does not link caps on the pain and suffering of patients and lower liability premiums for doctors.

This bill, like the bills that Republicans have pushed through this house in the past, is chocked full of false diagnoses and packed with

wrongheaded prescriptions. It was then, and is today, the type of legislative quackery that should make all of us cringe.

Further this bill will protect the pharmaceutical industry from liability as long as the drugs that harm patients are FDA approved. The FDA approval is designed to protect patients from harmful drugs, but it should not waive a company's responsibility for the drugs they put on the market. With all of the recent reports of how FDA approved drugs have harmed people from Vioxx to Bextra, to Accutane, to Paxil, now is not the time to limit patients' access to the courts.

This bill will victimize patients in the courtroom after they have already been victimized in the operating room. The pain and hardship that will be inflicted on these patients - who may have been robbed of their limbs, their sight, their ability to bear children, or their ability to function fully in society - is VERY REAL. But the promise of lower insurance premiums for doctors if we cap jury awards for victims of medical malpractice is ONLY ILLUSORY.

As I've said, there is no guarantee in this bill that premiums doctors pay will be reduced by one penny. In fact, there is no incentive for insurance companies to lower premiums if liability caps are put in place. What is guaranteed by this bill, however, is that the most grievously injured patients around the country – in your Congressional Districts – will be prevented from receiving just compensation for devastating injuries sustained at the hands of doctors.

The bill blames rising premiums on the victims of medical errors by capping their damages for pain and suffering, while completely ignoring the effect that insurers' own bad business decisions have on the high cost of premiums.

We can all agree that health care liability insurance is a critical issue that has a significant impact on patients, doctors and insurers.

To balance the interests of all involved, a comprehensive approach is needed that examines the issue from all perspectives.

But this bill takes a slanted, one-dimensional view of the problem that's bad for doctors and bad for patients. But of course, it's a boon for insurance companies!

This bill has nothing to do with providing better health care to patients, improving Americans' access to health care or even improving the cost-effectiveness of our nation's health care system.

This bill has everything to do with boosting the financial health of the nation's insurance companies.

Without any guarantee that savings from the bill's cap on damages will go to doctors – not the insurance industry - this bill deserves to be defeated.

I urge my colleagues to reject this harmful bill. Put the interests of physicians and patients above insurance company profiteering. Vote “No” on H.R. 5.

I yield back.